UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ARTHUR BLAKE, JOEL BAKER,
and JOHN HOLLAND,

Charging Parties

AND

CASE NO. 10-CA-095371

PARAGON SYSTEMS, INC.

Respondent

CHARGING PARTIES ANSWER TO RESPONDENT'E EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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CHARGING PARTIES' ANSWER IN RESPONSE TO RESPONDENT'S EXCEPTION TO ALJ DECISION

Charging Parties, Joel Baker, Arthur Blake, and John Holland, hereby file their opposition to the Respondent's filed Exceptions to the Decision of the Administrative Law Judge, and urge that the same be rejected for the reasons set forth herein.

FACTUAL BACKGROUND

Charging Parties, former Protective Security Officers ("PSOs") of the Respondent/ employer Paragon Systems, Inc., filed a complaint alleging that the Respondent acted in violation of the National Relations Act ("the Act") by interfering with their protected rights to engage in concerted activity, and in retaliation for having participated in such protected activity when they were terminated from employment based upon reasons which were falsified and/or a pretext for violations of the Act. More specifically, Charging Parties alleged that the Respondent/employer acted in concert with the COTR for the Federal Protective Service ("FPS") to terminate them after PSO and Interim Union President, Arthur Blake, communicated to a

client of the Respondent employer that the Union, as the exclusive bargaining representative for employees, intended to strike. Charging Parties also alleged that PSO Blake entered the workplace premises in the same manner, practice, and custom as did other employees of the Respondent employer. Charging Parties alleged further that the Respondent/ employer permitted these procedures and indeed instructed PSOs regarding this practice of PSOs entering such facilities unescorted, without signing in as a visitor, and without the necessity of screening as visitors - as such PSOs security personnel were adjudicated to by-pass such visitor screening by the federal government. Finally, the Charging Parties alleged that their conduct was similar to their counterparts who did not engage in concerted activity; yet the Respondent/ employer took the unprecedented action of terminating their employment based upon similar conduct.

The General Counsel's original complaint alleged violations of Sections 8(a)(1) and 8 (a) (3) of the Act (see the General Counsel's Complaint). The General Counsel sought, in such complaint, a finding that the Respondent/employer acted in concert with agents of the Federal Protective Service to interfere with the Charging Parties' rights to engage in activity protected under the Act; in addition, the General Counsel sought in such complaint a finding that the Respondent/employer acted in a discriminatory manner in subjecting the Charging Parties to adverse disciplinary actions based upon their participation in activities protected under the Act.

ARGUMENT AND CITATION OF AUTHORITY

The Administrative Law Judge found that the evidence adduced at hearing supported a clear finding that the Respondent/employer acted in cooperation with the COTR for the Federal Protective Service to terminate the Charging Parties based upon PSO Blake's communication to the employer's customer workplaces issues and based upon PSOs communication to such

customer of the fact that the Union intended to strike. The evidence revealed that FPS Inspector/COTR Jennie Dingman was already aware that the Union might call for a strike. The ALJ found, additionally, that PSO Blake's actions in proceeding to see Colonel Hall (who worked for customer Agency Army Corp of Engineers) about such strike motivated COTR Dingman's improper interrogation of the Charging Parties about their protected activities. The ALJ concluded further that Dingman displayed Union animus in her actions and in her interrogations of the Charging Parties, and that officials of the Respondent/employer were aware of this, yet chose to terminate the Charging Parties for reasons which were illegitimate.

The evidence supported the ALJ's finding that Paragon Assistant Manager, Veronica Edmiston, was present for the improper interviews by COTR Dingman, yet Edmiston did and said nothing to stop Dingman's conduct. 'The record further supports the ALJ's finding that PSO's Blake, Baker, and Holland simply followed standard workplace procedures, that the Respondent's management officials knew this, and that despite this fact, such officials cooperated willingly with COTR Dingman in violating FPS regulations and the Act in terminating these officers from their positions of employment. The ALJ found that this is not a case of an employer terminating employees based upon their violation of workplace rules; rather, this is a case of an employer's unflinching and determined effort to act together with FPS officials to preclude employees from engaging in the very activities for which are protected by law. The ALJ's decision found that all of the above conduct violated the Act, entitling the Charging Parties to the relief set forth in her Order.

At the outset, the Respondent/employer failed to substantively respond to the Unfair Labor Practice Charges filed by the Charging Parties. Thereafter, following a finding by the

Board that sufficient cause was shown to merit the filing of a complaint alleging violations of the Act, the Respondent filed a Motion for Reconsideration, and the Charging Parties responded to such Motion for Reconsideration (see Respondent's Motion for Reconsideration and Charging Parties' Opposition to Respondent's Motion for Reconsideration). The Board rejected such Motion for Reconsideration, and the General Counsel's complaint was filed. The parties were thereafter afforded the opportunity to adduce evidence and witnesses at a hearing which lasted for all or parts of three (3) days.

Following such hearing, the Parties were allowed to present post-hearing briefs (see Charging Parties' Post Hearing Brief, the General Counsel's Post Hearing Brief, and Respondent's Post-Hearing Brief). After considering the evidence presented, listening to the testimony of the witnesses, and considering the law and the facts, the Administrative Law Judge issued her Findings and Order, concluding that 1) the Respondent/employer indeed violated the Act by terminating the Charging Parties, 2) that the Respondent/employer – in violation of the Act - deliberately failed to investigate the charges improperly made against the Charging Parties, 3) that the witnesses presented by the Respondent/employer were not credible, 4) that the Charging Parties did not violate any rule of the Respondent/employer, and 5) that the Respondent/employer was aware that it was not required to terminate the Charging Parties, yet the Respondent/employer, to the contrary - in bad faith - willingly cooperated with FPS in terminating these employees based upon their participation in protected activity.

The decision by the Administrative Law Judge is similar to the findings and conclusions of law made by the Administrative Law Judge in the Board decision of *Hartman and Tyner, Inc. d/b/a Mardi Gras Casino and Hollywood Concessions, Inc*., 359 NLRB 100 (2013). In that

instance, the Board affirmed the findings of the Administrative Law Judge that the established practice of the employer was to allow the very conduct for which the employer used as a pretext for termination. Additionally, in *Mardi Gras*, as in this instance, the ALJ and the Board found that employees were coercively interrogated. *Id*., at footnote no.5. Finally, in *Mardi Gras*, as in this instance, the employer's contention that the employees violated workplace rules which would have resulted in their termination notwithstanding their Union activities was found to be meritless by the ALJ and affirmed by the Board.

In addition to all of the foregoing, in this instance, the Respondent/employer failed to present any PSOs to testify regarding what its officials alleged to have been workplace rules; nor did the Respondent/employer call to testify Inspector Beuning - who saw PSO Blake in the loading dock area, and who Blake advised that he had just dropped off a package to Colonel Hall. The Board has held that an adverse inference may be drawn when a party fails to call a witness assumed to be favorably disposed toward such party, and the Charging Parties submit that such an inference is merited in this instance. See *Parksite Group,* 354 NLRB 801 (2009).

The Administrative Law Judge made extensive and unequivocal findings that the Respondent/ employer's witnesses were not credible, and set forth an unrefuted basis for such credibility determinations. Moreover, the Administrative Law Judge set forth a clear and thorough review and analysis of all of the evidence, the law and the facts. Under such circumstances, the Board has held that credibility determinations of the Administrative Law Judge should not be disturbed See *Upper Great Lakes Pilots,Inc.,* 311 NLRB 131 (1993). The Respondent/employer's exceptions are a simple attempt to re-litigate the hearing of the General Counsel's complaint and to extrapolate conclusions for which the Respondent/employer failed to

present evidence to support. The Respondent failed to present credible witnesses, while the Charging Parties and the General Counsel presented several witnesses and documentary evidence in support of their contentions that the Charging Parties did not violate workplace rules and that their employer, acting together with FPS officials, terminated them in a manner calculated to deprive them of their right to participate in activities protected under the Act. As such, the Respondent/employer has presented no basis for any exception to the Administrative Law Judge's decision, and, accordingly, the same should be affirmed by the Board.

CONCLUSION

Viewing the evidence presented at the hearing, and considering the Administrative Law Judge's well reasoned decision, the Respondent/employer has failed to present any basis for the Board to decline to affirm the ALJ's Decision and Order. As such, the Board should affirm the decision of the Administrative Law Judge and order the relief set forth therein.

Respectfully submitted on this 21st day of March, 2014.

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CERTIFICATE OF SERVICE

It is hereby certified that I have this day served a true and correct copy of the herein filed pleading on the following named parties by causing a copy of the same to be deposited in the mail with proper postage affixed thereto and addressed as follows:

Regional Counsel
Region 10
NLRB
233 Peachtree Street, Suite 1001
Atlanta, Georgia 30303

and

Paragon Systems, Inc.
Through its Attorney
Thomas P. Dowd
Littler Mendelson,P.C.
Washington, DC 20036

This 21st day of March, 2014.

J. TAYLOR & ASSOCIATES, LLC

By: S/JACQUELINE K. TAYLOR
Jacqueline K. Taylor